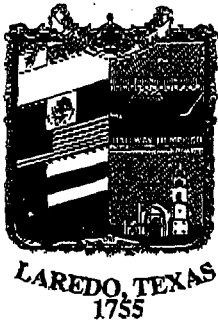


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CITY OF LAREDO

ELIZABETH G. FLORES

Mayor

FRA-2004-18746-34

October 5, 2004

Docket Clerk
DOT Docket Management Facility
Room PL-401 (Plaza Level)
400 7th Street, SW
Washington, DC 20590

RE: FRA Docket No. 2004-18746

Dear Administrator:

The Port of Laredo handles the majority of rail cargo between the United States and Mexico. The Union Pacific Railroad crosses north-south and the Texas-Mexican Railway crosses east-west, bisecting Laredo and creating major access obstructions. Our citizens, our schools, our trade community and especially our emergency service providers feel helpless, held hostage throughout the day.

The amount of rail traffic is growing daily and each train is getting longer and longer and causing more delays for our citizens at crossings. A major cause of these delays is the time that the rail companies spend having to process mechanical inspections and air brakes tests again once the train enters the United States.

We respectfully request that these inspections be done only on the Mexican side to U.S. Standards at the Sanchez Rail Yard. I would ask that you grant the rail companies doing business in our City a waiver to allow TFM to perform train inspections minutes away from the river in Mexico. This would allow for less inconvenience at rail crossings and provide a safer environment for our citizens.

In Laredo we continually look for methods to decrease congestion caused by the amount of trade crossing at our Port. We are also ever vigilant to threats against our country. We believe that this Waiver will help us meet this goal. By allowing this process to be done in Mexico, trains can travel directly from the bridge northbound. If you have any questions, you may contact me at (956) 791-7381.

Warmest regards.

Sincerely,

Elizabeth G. Flores
Elizabeth G. Flores

FEDERAL RAILROAD
ADMINISTRATION
2004 OCT 12 AM 8:34
OFFICE OF CHIEF COUNSEL

Statement of the
The Brotherhood of Locomotive Engineers and Trainmen
Before the
Federal Railroad Administration (FRA)

Regarding the
Union Pacific Request for Waiver
Docket No. FRA 2004 -18746

October 1, 2004

Washington, DC

Presented by
Terry Briggs, Chairman
Brotherhood of Locomotive Engineers and Trainmen
Texas State Legislative Board

Good morning, my name is Terry Briggs. I am Chairman of the Brotherhood of Locomotive Engineers and Trainmen (BLET), Texas State Legislative Board. I am authorized by our National President, Don Hahs, to speak on behalf of the BLET today. Thank you for giving us this opportunity.

The BLET has numerous concerns and questions regarding the Union Pacific request to eliminate train and locomotive air brake and mechanical inspections on trains entering the United States in Laredo, Texas and substitute that inspection with one done in Mexico. Our concerns are driven by the need for safety of our members, who will be operating the trains and locomotives affected by the proposed changes, as well as the safety and security of the citizens of the communities through which these trains will be operating.

Language and technical/regulatory barriers

The Union Pacific has provided numerous documents in support of their request for waiver. Upon studying those documents, the Spanish translation of 49CFR parts 232, 215, 229, and 231, causes us concern. They are not a direct translation of U.S. regulations. These documents are provided to show how the Transportacion Ferroviaria Mexicana (TFM) railroad employees are trained in FRA regulations and what training material is used. A comparison of the provided documents to the English version of the same CFR parts reveals substantial differences exist between the English and Spanish versions. For example, in the Spanish version of 49CFR there are numerous instances where text is omitted or deleted ranging from single words or phrases to paragraphs and even entire sections numbering twenty or thirty pages. In addition, the Spanish translation is

from an outdated version of 49CFR, one that lacks any mention of locomotive sanitation regulations that have been in effect since 2002. The translation from English to Spanish is, in itself, not properly done. For example, the original translator used the American system of writing dates rather than the Latin American system and that sounds awkward to the Spanish reader. Additionally, many accent marks were omitted, which is the equivalent of a misspelling. These examples are offered as an illustration of the questionable overall quality of the material that is used to train the personnel who will be charged with conducting the inspections in accordance with current FRA regulations. If the regulatory language is incorrect, we can fully expect the quality of the training material to be questionable. It is therefore doubtful that the training TFM employees receive is fully compliant with 49CFR.

BLET is also concerned about the differences in language used by U.S. and Mexico and the problems that will undoubtedly arise if joint operations are undertaken. In April 2004, Kansas City Southern (KCS) and Grupo TMM, a Mexican transportation company, released separate statements regarding the decision of an arbitrator the two companies had used to settle a dispute over a contract that Grupo TMM had attempted to cancel. The KCS press release said in pertinent part "...that both parties agreed to discharge in good faith all of the obligations of the acquisition agreement..." while the Spanish version Grupo TMM released said "...the two companies have agreed to free themselves from all obligations of the contract of sale." A Spanish translator misinterpreted the meaning of the simple word "discharge" and that lead to two press releases that

had exactly the opposite meaning from one another. This misunderstanding caused little more than friction between the two companies, however, a misunderstanding of the meaning of instructions on how to perform an air test or inspection could lead to a catastrophic accident. If such a misunderstanding can happen between KCS and Grupo TMM, it is not a stretch to imagine it can happen between the Union Pacific and TFM.

Additionally, Union Pacific proposes the tests and inspections performed by TFM be documented by dual language documents. These documents are integral to safe railroad operations and are vital in accident investigations. BLET is not convinced that all applicable Spanish documents, which have been provided with this request for waiver, have been checked to ensure they maintain the same meaning as their English counterpart.

The United States and Mexico also use different units of measure. FRA has expressed concern in the past regarding these differences, and how the difference may affect rail safety in joint operations between the United States and Mexico. BLET shares those concerns. Documents, provided with this request for waiver, do not reassure the BLET that the units of measure used to conduct tests and inspections in Mexico will be consistent with those prescribed in FRA regulations and that proper training has been given those employees who will be using them.

Accountability

Neither Union Pacific nor FRA has addressed the issue of accountability for those persons responsible for conducting inspections and tests in Mexico. FRA

has the authority to impose civil penalties against railroads and their employees for failure to comply with safety related regulations. These penalties are in place to act as an effective deterrent against lax inspections and the use of non-compliant or unsafe equipment. Clearly, FRA has no jurisdiction in Mexico and therefore no method of ensuring compliance other than TFM railroad's voluntary cooperation. Regulations governing railroads in the United States have been developed over many years and are in place, along with applicable penalties, to force compliance precisely because railroads in the U.S. have demonstrated, time and again, an unwillingness to voluntarily provide adequate safe guards for their employees and the public. BLET has great difficulty understanding how allowing the TFM railroad, which is based in Mexico, to voluntarily comply with FRA regulations, as would be the case if this waiver is granted, is consistent with FRA's mission to continue to improve rail safety. Additionally, BLET seeks an explanation as to which railroad will be held accountable should an inspection by TFM fail to detect defective equipment, and that subsequently leads to an accident, injury or release of hazardous material.

Union Pacific proposes that all applicable records be kept by the Texas Mexican (Tex Mex) Railroad's Chief Mechanical Officer as well as at TFM's offices in Nuevo Laredo, Mexico. FRA states, however, in the public notice of Petition for Waiver of Compliance, that the records will be maintained solely by Tex Mex. Just where will records be kept and to what degree will FRA and others have access to them? This ambiguity is yet another example of an absence of forethought with regard to the regulations and their relevance to safety. No

consideration should be given to allowing any waiver so long as there is a question of FRA's access to recordkeeping.

There is no need for this drastic action

Union Pacific proposes that locomotive daily inspections on northbound trains be done in Mexico by TFM employees. However, Union Pacific goes on to say that locomotives used to deliver trains to TFM generally return to the United States in less than 24 hours. Given this fact, BLET sees no good reason why the locomotive daily inspections cannot continue to be done by Union Pacific employees in the U.S. where an enforceable standard is already in practice.

BLET understands the City of Laredo's wish to reduce the problems of rail congestion within the city, and their desire to eliminate, as much as possible, the problems of blocked crossings as trains are inspected and prepared for departure. We do, however, believe that elimination of the train air brake and mechanical inspections is too drastic a step in seeking a solution to the congestion there. Rather, we urge the Union Pacific Railroad to look to other options, such as infrastructure improvement, and more employees to conduct inspections. In fact, FRA, Union Pacific, Tex Mex and several Rail Unions have already cooperated in providing one option to alleviate the congestion in Laredo. That option includes the use of the Tex Mex Port Laredo facility. The Union Pacific, however, has chosen not to utilize this option.

The preeminent issue of our time—security

The Department of Homeland Security and Transportation Security Administration, as well as BLET are currently raising awareness of security

vulnerabilities that exist in the freight rail system in the United States. With respect to this operation, the inspections that are currently done on trains in Laredo provide an added layer of security. Because approval of this proposal would remove that redundancy, and lessen security on those trains, BLET urges the Department of Homeland Security and the Transportation Security Administration to study this proposal and make their finding a part of this record.

Conclusion

In summary, BLET believes this request for waiver of compliance is directly contradictory to ongoing efforts FRA has made to conduct more thorough and more effective inspections of railroad freight equipment and to further enhance safe rail operations. If increasing the Laredo gateway capacity is to be achieved, it should be achieved using other options short of exporting regulatory oversight of safety critical locomotives and equipment to a country that has not demonstrated the same safety culture as in the United States. The impact this waiver may have on matters of security must be addressed. Based upon that request, and to allow ample time for additional comments on this complex proposal, BLET requests that the public record of these proceedings be held open an additional sixty days.

Thank You.

ORAL STATEMENT OF RICHARD A. JOHNSON

Good Morning,

My name is Richard Johnson. I have been the Division President of the Brotherhood Railway Carmen Division of the Transportation•Communications International Union, which I will refer to as BRC, since May 1, 1996.

BRC represents employees employed as Carmen by each of the Class I rail carriers, including the Union Pacific, as well as certain Class II and III railroads, commuter railroads and Amtrak. BRC represents the eight UP Carmen working in Laredo, Texas whose responsibilities include inspection of trains originating in Mexico.

I am also appearing today on behalf of the International Brotherhood of Electrical Workers, who are unable to be present. The IBEW represents the individuals employed by the nation's rail carriers as electricians and electrical foremen, including those employed by the Union Pacific. There are five UP electricians and one UP electrical foreman working at Laredo, Texas, who are responsible for the inspection of locomotives on trains originating in Mexico that pass through Laredo on their way to the United States.

Before addressing the substance of the issues raised by the UP waiver application, I want to thank the Board for extending the time to submit written comments and for scheduling this oral hearing today.

I am here today to offer BRC's and IBEW's comments on a waiver application submitted by the UP on July 29, 2004 seeking the waiver of 49 CFR 232.205 – Class I brake test initial terminal inspection; 232.409 – Inspection and testing of end-of-train devices; 215.13 – Pre-Departure inspections; and 229.21 – Locomotive daily inspections. BRC and IBEW represented employees currently perform all of the involved train inspection tests in Laredo, Texas on trains originating in Mexico. Glaringly absent from UP's filing is a request for a waiver from 29 CFR 174.9 – Hazmat inspections, or any discussion of how UP, under the inspection system it is seeking, intends to comply with the hazmat regulations.

The UP maintains that all necessary inspections are being performed by employees of the TFM Railroad, and that it should not be required to re-inspect trains a few miles away after they cross the border from Mexico. UP urges that the TFM employees are properly trained to perform these inspections and that absent any understanding with the Mexican safety agencies, TFM can permit FRA inspections to assure its compliance with FRA standards. For the reasons I will be discussing, UP's contentions can not withstand scrutiny.

- **First**, under FRA CFR 232.215, the only test that is required in Mexico is a transfer test since these trains are moving less than 20 miles. This test is far less thorough than the Class I inspection given by the UP employees in Laredo. Of course, after these trains come into the United States they will travel far more than 20 miles. While the Mexican transfer test might reduce UP's claimed

inefficiencies, UP's claim that TFM employees are already performing Class I inspections that would comply with FRA regulations is disingenuous, to say the least.

- BRC-represented Carmen and IBEW-represented electricians are currently inspecting trains at Laredo, Texas, which according to UP have been already inspected by the TFM consistent with FRA standards.

- I am submitting a summary of defects found by BRC represented Carmen at Laredo, Texas of trains previously inspected by TFM in Nuevo Laredo Mexico. This listing of defects is intermittent, not daily. It is based on the handwritten documents kept by our members showing defects they uncovered on certain specific dates. The list should raise significant doubts about UP's contentions regarding the quality of inspections performed by TFM. The trains on this list are 80 to 90 cars in length. On some dates nine cars were pulled from service for violations of FRA rules, defects that went undetected by the TFM.

Under UP's application, up to 10% of the cars inspected by TFM, that contained serious safety defects, would be permitted to travel up to 1000 miles into the interior of the United States.

- **Second**, UP has been struggling to improve the efficiency of its own inspections raising serious questions about its ability to provide proper inspections through another carrier, beyond the scope of the FRA's authority. The 2002 Safety Audit Compliance Program, referred to as SAC-P, revealed an 8% defect

rate for inspected cars, and a 45% defect rate for inspected locomotives. The recently completed 2004 SAC-P shows no improvement in these ratios.

- **Third**, UP asserts that TFM inspectors have the same training and skills as their American counterparts. The results I have just described belie that claim.

UP points to the training TFM inspectors receive by the National Academy of Railroad Sciences to support its claim. The BNSF relies on the Academy to provide the same training to its apprentice inspectors. There is a significant difference, however, between how the TFM and BNSF use the Academy courses. For BNSF these courses are an introduction to further extensive training. BNSF Carmen apprentices must work for 732 days with a journeyman, and pass periodic tests to demonstrate their proficiency before becoming a journeyman. IBEW electricians must satisfy the same or similar requirements before being deemed qualified to perform electrical work. TFM relies only on these introductory courses as a means of certifying TFM's employees skill.

- **Fourth**, as already noted, the UP waiver application is strangely silent on how it intends to comply with CFR 174.9, the Hazmat regulations. These regulations require an inspection of each car for the required markings, labels, and placards as well as the securement of closures and leakage. The regulations are currently being reviewed by the Transportation Safety Agency and the FRA in coordination with the office of Homeland Security. Current security concerns dictate that now is not the appropriate time to entrust hazmat inspections to

poorly trained foreign nationals, and that cars undergoing less than rigorous hazmat inspections should not be permitted to travel up to 1000 miles into the interior of the United States.

- UP's waiver request is also silent as to how it intends to comply with regulation 232.109 which requires that the locomotive engineer be advised of the operational status of the dynamic brakes at initial terminal or other locations where a locomotive engineer begins operation of a train. At the border a new engineer would assume control of the train. UP does not state how the engineer will be provided this information.

- **Fifth**, UP's waiver request states that the Texas Mexican Railway Company will be the carrier responsible for maintaining the required documentation. The Tex-Mex in recently filed comments states that it will not be responsible for such records because it, and I quote, "...does not wish to subject itself to any potential liability with regard to the maintenance of records that have nothing to do with its own operations."

Tex-Mex's withdrawal from UP's scheme underscores the difficulties posed were inspections to be performed outside the U.S. by carriers beyond the scope of FRA's enforcement authority.

- **Sixth**, notwithstanding the foregoing, UP maintains that the waiver it is requesting is consistent with the system in place currently on the Canadian border. There are, however, very material differences ignored by the UP.

- CP and CN employees currently inspect trains in Canada before they enter the US and US employees inspect trains in the US before they enter Canada. In neither case is a re-inspection required by either country.

- This system was instituted in June 1998, after three years of cooperative discussions between Transport Canada and the FRA. This process was agreed to by both agencies, which arranged for their counterpart to inspect trains outside their jurisdictions, before trains enter their countries. As a result Transport Canada and FRA perform inspections in each others countries.

No such relationship exists between the FRA and its Mexican counterpart, and it is my understanding that there is no agreement on a similar joint inspection arrangement.

- In the absence of a similar relationship that exists between the FRA and Transport Canada, UP has proposed a private system of regulation whereby TFM would agree to FRA inspections in Mexico. UP does not explain how FRA officials would be permitted to perform their functions in Mexico by the Mexican government. Nor does UP explain how sanctions are to be enforced in the event they are imposed by the FRA, or even whether such sanctions could be legally enforced under these circumstances. Nor does UP say where the FRA, which already is hard-pressed under existing appropriations to fulfill its statutory responsibilities, would find the additional necessary moneys to finance travel into Mexico to monitor TFM's operations.

- **Seventh**, UP asserts that, to assure compliance, UP itself will inspect two trains of the many trains per week that originate in Mexico. UP fails to state when, where or how these twice weekly inspections will occur. The Laredo facility operates 24 hours a day, seven days a week doing these inspections now.

BRC believes that these inspections, like the inspections done for Canada, should be done by the FRA at the border crossing so that no excuse can be made for the defects found. Anything less will amount to the fox watching the hen house.

Finally, we believe that the FRA should consider the long-term implications of what UP is proposing. Laredo is not the only gateway for rail traffic into the United States and these are not the only trains that come here from Mexico. Do not act hastily as this petition for exemption is likely a stalking horse for what the industry wants to accomplish in the future – the greater reliance on Mexican facilities for the maintenance and repair of their rolling stock and locomotive fleets and the easing of what they consider to be too much oversight of car and locomotive safety by the federal government.

In summary, it is respectfully submitted that the FRA should deny this particular requested waiver because:

- Inspections of trains originating in Mexico demonstrate a significant number of defects missed by TFM;

- UP has offered no credible explanation of how TFM employees will be trained to effectively enforce FRA safety standards;
- Unlike the situation in Canada, there is no agreement or procedures for inspection verification with the Mexican authorities, no assurance that FRA could enforce any remedial actions it deems necessary for violations it uncovers, or indeed any means to assure that FRA inspectors would even be permitted to come in to Mexico to perform the limited oversight that UP contemplates;
- UP has offered no explanation how FRA's hazmat regulations would be enforced under the carriers' proposal.

Thank you for your consideration of these views.

DOCKET NO. FRA 2004-18746
UNION PACIFIC RAILROAD COMPANY – PETITION FOR WAIVER

STATEMENT OF GARY R. DAVIDSON
GENERAL SUPERINTENDENT – TRANSPORTATION SERVICES
UNION PACIFIC RAILROAD COMPANY

Good Morning. I would like to thank FRA for the opportunity to present our waiver request in this proceeding. My name is Gary Davidson, and I am General Superintendent – Transportation Services for Union Pacific's San Antonio Service Unit. With me is Frank Hernandez, Vice President of Operating Support for TFM and Lynn Faulkner, General Director – Car Operations for UP.

We are requesting in the waiver that FRA permit train brake and mechanical inspections which TFM performs in Mexico a few miles from the U.S. – Mexican border on certain run-through trains be considered valid for movement in the United States. This will allow these trains to operate through Laredo and continue to their designated 1,000 mile inspection locations. This is the same way train brake and mechanical inspections are handled on run-through trains received from Canada as well as run-through trains interchanged between two United States railroads. The inspections performed on the first railroad are valid for movement on the second, and there is no reinspection required at the interchange. It is also the same way that brake and mechanical inspections are handled on run-through trains which UP interchanges to TFM at Laredo for movement into Mexico.

We've given FRA a very comprehensive waiver petition describing why we need this waiver and how it will work. Copies of the petition are in the white binders before you. Let me summarize the key points.

We have a very serious congestion problem at Laredo. The amount of rail traffic being handled between Mexico and the United States has skyrocketed, particularly since NAFTA. In 1989, for example, only about four trains a day operated between the U.S. and Mexico via Laredo. Today, it is common to handle twenty-four or more trains a day.

A major cause of the congestion at Laredo is the need to do brake and mechanical inspections on the run-through trains we receive in interchange from TFM. Under our current procedures, we perform a mechanical and Class I brake inspection on these trains at our Downtown Laredo Yard. The RG Runaround Track track used for these inspections has over thirty grade crossings. The way we normally operate is to pull two run-through trains into this track, one behind the other, for mechanical and brake inspections. Both trains must then be broken into multiple segments - as many as 15 per train - to clear the grade crossings. Then we perform the mechanical inspections. After these are done, the trains are coupled back together for their Class I brake tests, which cause the grade crossings to be blocked for 1 to 2 hours or more. The entire process of pulling trains into the RG Runaround Track, breaking the crossings, doing the mechanical inspections, coupling the trains back together and doing the Class I brake tests results in 5 to 7 hours of delay per train. These delays are particularly frustrating because TFM is fully capable of inspecting these trains to FRA

standards only a few miles on the other side of the border in Mexico, and is prepared to do so.

Our proposed solution to this problem is to allow the brake and mechanical inspections performed on the Mexican side of the border to be valid for movement in the United States, as we have requested in our waiver. This would eliminate 5 to 7 hours of delay on over 1,000 trains per year, and free up track space in Laredo for other rail traffic. This is an important NAFTA initiative. No other single initiative has the prospect of having such an immediate impact on transit time and customer satisfaction on international traffic moving through the Laredo Gateway. It will also have a positive impact on Laredo and its citizens by eliminating the crossing blockages that result from the current reinspections.

We are confident that TFM is capable of inspecting trains to FRA standards. Mr. Hernandez of TFM will discuss TFM's training procedures and the quality of its inspections. All documentation required by FRA, such as air brake certificates, dynamic brake status and the like, will be provided to UP by TFM in dual language format, as shown in our waiver petition. All records required by FRA will be kept in the United States, where they will be available to FRA personnel, as well as at TFM's Nuevo Laredo and Monterrey offices. As you know, TFM has agreed in their letters of July 13 and July 23 to inspections by FRA in Mexico. UP will also put in place a Quality Assurance Plan with TFM to verify that the TFM inspections are being performed to FRA standards. Under this Plan UP will inspect at least two TFM inspected run-through trains per week. These inspections will be performed either at the Laredo or San Antonio terminal complex. The results of the UP inspections will be

recorded and reported to TFM, and will be furnished to FRA upon request. We will also conduct a monthly review of these inspections with TFM personnel, and FRA inspectors will be invited to participate in these reviews.

Finally, I'd like to address two issues that have come up since we filed our waiver petition. First, when we filed the waiver, we anticipated that the Tex Mex railroad would keep FRA required records at its Serrano Yard offices, where they would be available to FRA. Since then, we've learned that Tex Mex is unwilling to keep records for UP traffic. As such, UP will either keep these records at its San Antonio offices, or will make other arrangements for FRA to have access to these records in the United States that are acceptable to FRA. Second, there have been some questions raised about what trains will be covered by this waiver and how they will be designated. Currently, TFM is performing FRA Class I brake inspections and mechanical inspections on UP train ZMXYC, which is an intermodal run-through train. If the waiver is approved, we anticipate it will be initially used for about 3 trains per day, although the number will vary from day-to-day. The way trains will be designated is that trains operating under the waiver will carry a TFM air brake certificate, as shown at Tab 17 to the waiver petition.

In conclusion, I urge FRA to approve this important NAFTA initiative to expedite international run-through trains operating from Mexico to the United States. I and my colleagues would be happy to answer any questions you may have.

DOCKET NO. FRA 2004-18746
UNION PACIFIC RAILROAD COMPANY – PETITION FOR WAIVER
FRA PUBLIC HEARING – WASHINGTON D.C. - OCTOBER 1, 2004

STATEMENT OF FRANK P. HERNANDEZ
VP OPERATIONS SUPPORT
TRANSPORTACIÓN FERROVIARIA MEXICANA (TFM)

Good morning. I would like to begin by thanking the Federal Railroad Administration, the Union Pacific Railroad, and in particular, all of you, for the opportunity to be here today in support of this waiver request.

As Mr. Davidson stated, my name is Frank P. Hernandez. I am Vice President of Operations Support for TFM and am based out of Monterrey, Mexico. In my capacity as VP Operations Support, I am responsible for various areas of our operation. Among them, ensuring TFM's compliance with the federal regulations of the regulatory agencies we deal with, in or out of Mexico. In this particular case, FRA.

I have worked within the railroad industry for almost 32 years. The first 24 years were in the U.S. with the former Santa Fe, later BNSF. For almost 8 years now, since 1997, I have been working in Mexico, due to the privatization of the Mexican railroad industry, by way of my affiliation with the U.S. railroad industry. However, even though I am working in Mexico, I interact daily with many U.S. railroads, which are our biggest interchange partners, and with the regulatory agencies, in particular FRA, which oversee their safe and efficient operation.

TFM has the same concerns as the U.S. railroads, as it relates to the safety of our employees and the public. The operational challenges that TFM faces at the border, and in Nuevo Laredo, are nearly identical to those the Union Pacific faces in Laredo. In an effort to improve fluidity of operations without compromising safety, TFM began, in 2001, accepting the inspections and airbrake tests conducted by UP on southbound run-through trains destined to Monterey and beyond. This was seen as a significant NAFTA related initiative, and was looked upon favorably by Secretaria de Comunicaciones y Transportes (SCT), the Mexican regulatory agency, and had positive effect on TFM's image in the community and upon our operations. Fluidity and yard capacity at Sanchez Yard in Nuevo Laredo was improved and the time vehicular grade crossings were blocked in Nuevo Laredo was greatly reduced. It was a win-win-win situation for TFM, UP and our respective communities. UP's request for this waiver, if approved, completes the reciprocal nature of this initiative and will facilitate even greater NAFTA-fueled increases in international traffic through the Laredo Gateway.

The railroad industry of Mexico, and TFM in particular, has changed dramatically since 1997. From the outset, TFM's goal has been to adopt and/or emulate the good practices that our U.S. and Canadian counterparts have in effect on their properties,

combining them with the good practices we found to already be in place, upon our arrival in Mexico.

TFM is not the old Ferrocarriles Nacionales de Mexico, which many of you know as FNM. We do not operate in the same manner as the former FNM and strive for excellence in our operations by way of safe and efficient operating practices. With very few exceptions, we operate in the same manner as do our U.S. and Canadian counterparts. Most of TFM's operating practices and rules are identical to those of the Union Pacific and the other class one railroads of North America. This is not a mere coincidence, rather, it is part a well designed plan that we put into place as a company, wherein we could make rapid, safe, and efficient operational changes, without having to reinvent the wheel.

One of the ways in which we have been able to achieve many of the positive changes which have occurred, is by way of improving the training our employees receive. Training is a top priority to TFM, and we do not limit training to the best trainers in Mexico, but acquire training assistance from other countries as well. All of our Transportation supervisors and instructors receive refresher training at the NARS Institute (National Academy of Railroad Sciences) every year, in order to stay abreast of the best operating practices that will help us continue to work in a safe and efficient manner. Specifically related to this waiver request, all of our Mechanical department personnel involved with our border operations or international traffic have received additional or refresher training on all applicable parts of 49CFR. Earlier this year, our personnel received additional required training on Part 232. This training was provided by way of the International Technical Training Services Group and the National Academy of Railroad Sciences(NARS). NARS is also the same training institute that provides training to US railroad personnel and many FRA field inspectors. This training is simply a continuation of the training programs we have in place at TFM, wherein our personnel receive both classroom and hands on training that helps us ensure that our personnel can put into practice in the field, those things they learned in the classroom. Our hands on field training programs have allowed us to participate equally in joint mechanical inspections with experts from FRA, the Texas Railroad Commission, and numerous U.S. railroads. Our mechanical defects and derailments related to mechanical causes are at their lowest level since the start of our operations. Our mechanical inspections are second to none and must remain at that level in order for us to operate in the safe and efficient manner that is so critical to us. We operate in accordance with the same standards as U.S. railroads, as it relates to FRA and AAR regulations.

I would again like to emphasize the fact that while TFM is based in Mexico, we are truly an international railroad and our operations require us to have the knowledge and adherence to the regulations of the U.S. regulatory agencies and not only those of Mexico. As I previously stated, we are not the old FNM. We are just like you, in the sense that we must operate safely, using the best practices available, in order to be profitable and survive in this very competitive industry.

TFM will continue to work closely with the U.S. regulatory agencies, in particular FRA,

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as well as with the railroads and suppliers that will help us maintain the high standards we have set for our operations.

In closing, I would like to again state how strongly TFM favors this waiver application and believes in the benefits to be derived, on both sides of the border, with the granting of this waiver. Further, I believe these benefits can be realized with absolutely no compromise to the safety of operations. This has simply been a quick glance at some of the things we have done in order to improve our company and make such reciprocal operating changes possible. Obviously, in my attempt to provide a brief and concise presentation, I may not have specifically addressed an issue that may be of particular interest to you. Therefore, please feel free to ask any questions you may have of me.

Thank you for your time.

BARNES & THORNBURG

297480

Richard H. Streeter
(202) 408-6933
Email: richard.streeter@btlaw.com

DEPT. OF TRANSPORTATION
DOCKETS

2004 SEP 24 P 4: 12

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September 24, 2004

Docket Clerk
Department of Transportation
Central Docket Management Facility
Room PL-401
400 Seventh Street, S.W.
Washington, D.C. 20590-0001

RE: FRA-2004-18746-9

Dear Gentlemen or Ladies:

Enclosed are three copies of the Comments of The Texas Mexican Railway Company ("Tex Mex") in response to the Union Pacific Railroad's Request for Air Brake and Inspection Waiver. As more fully explained in the Comments, Tex Mex supports the request for a waiver. However, it is opposed to the record retention proposal in that it would require Tex Mex to retain records related to the operations of the Union Pacific Railroad.

If additional information is required, please contact the undersigned at 202-408-6933. Two additional copies are enclosed with the request that they be date-stamped and returned. Thank you for your consideration in this matter.

Very truly yours,



Richard H. Streeter

RHS:rs
Enclosures

297480

Before the
Federal Railroad Administration
United States Department of Transportation

DEPT. OF TRANSPORTATION
DOCKETS

2004 SEP 24 P 4: 12

Docket No. FRA-2004-18746-1
Union Pacific Railroad Company Request For Air Brake and Inspection Waivers

Comments of The Texas Mexican Railway Company

The Texas Mexican Railway Company ("Tex Mex"), by and through its counsel of record, hereby files its Comments in response to the petition of the Union Pacific Railroad Company ("UPRR") filed July 29, 2004.

The Waivers: Tex Mex Supports The UPRR Waiver Requests

By its petition, UPRR has requested a "waiver of 49 CFR 232.205 - Class I brake test-initial terminal inspection, 232.409 - Inspection and testing of end-of-train devices, 215.13 Pre-Departure Inspection, and 229.201, Locomotive Daily Inspection, as necessary to allow tests and inspections that are performed in Mexico by the Transportacion Ferroviaria Mexicana (TFM) to be considered valid for run-through trains interchanged at the Laredo, Texas Gateway."

As UPRR observed, "[t]hese trains are pre-blocked in Mexico and currently receive a Class I air brake inspection and pre-departure mechanical inspection in Mexico at the TFM's yard in Nuevo Laredo. Under present operating procedures, the trains travel only a few miles before receiving another Class I brake test and mechanical inspection in the United States. This proposal would save approximately five hours per run-through train and greatly reduce current congestion and increase capacity at the Laredo Gateway."

Tex Mex agrees with UPRR's proposal and supports a grant of the waiver. Indeed, should FRA grant the waiver, Tex Mex respectfully requests that the waiver be extended to its interchange operations with TFM which are effectively identical to those of UPRR. The same

savings and benefits that UPRR has identified apply with equal force to the Tex Mex operations. Should FRA decline to grant Tex Mex the same waivers in this docket, Tex Mex will file its own request, which will echo the positions taken by UPRR. Simply stated, what is good for UPRR is equally beneficial for Tex Mex.

G. Records Retention and J. Documentation of Class I Air Brake Test: Tex Mex Opposes the Records Retention Proposal

Although Tex Mex supports the grant of the waiver, it objects to and opposes those portions of the proposal that would require Tex Mex to maintain records at its Serrano Yard offices that are related to UPRR operations. UPRR's Request provides, as herein pertinent, that:

G. Records Retention

1. All required records will be retained by TFM and Tex Mex. It is presently anticipated the records will be kept at the Serrano Yard offices of the Texas Mexican Railroad (sic), as well as at TFM's Nuevo Laredo and Monterrey offices. All records at all locations in Mexico will be in the custody of the VP-Operations Support, TFM. The records retained at the Serrano Yard offices of the Texas Mexican Railroad (sic) will be in the custody of the Tex Mex Chief Mechanical Officer. The records will be in dual language format. The location where records are kept will not be changed without the FRA's consent.

J. Documentation of Class I Air Brake Test

1. As previously mentioned (section G above), all required records will be retained by Tex Mex and TFM. ...

The specific reasons for Tex Mex's objections to retaining UPRR's records are as follows:

- Tex Mex does not wish to subject itself to any potential liability with regard to maintenance of records that have nothing to do with its own operations, but which relate solely to UPRR's operations.

- UPRR maintains a terminal in Laredo that is located a few hundred feet from the International Railroad Bridge and is in the best position to maintain custody of the records that involve trains that are to be operated over the UPRR system.
- UPRR intends to conduct a "[m]onthly detailed review of defects noted." If the records were to be maintained at Tex Mex's facility, the monthly review could prove to be disruptive of Tex Mex's administrative operations. Moreover, the monthly reviews would be facilitated if UPRR were to maintain its own records at its own facilities.
- The process that has been suggested imposes additional administrative costs on Tex Mex without any corresponding administrative benefits.

In closing, Tex Mex wishes to emphasize that if FRA were to grant its request that it be granted a waiver in this proceeding covering its run-through operations with TFM, Tex Mex would agree to retain the required inspection records at its Serrano Yard offices for its own operations.

Respectfully submitted,



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